IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

SATURDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 5053 of 1996

Between:

M/s. Bhagwathi Enterprises, Rep. by its Manager, Jagdish Singh. Secunderabad,

..... PETITIONER

AND

1 The Commercial Tax Officer, Mahankali Street Circle, SECUNDERABAD.
2 The Deputy Commissioner (Commercial Taxes) Secunderabad Division, SECUNDERABAD

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ of certiorari or any other appropriate writ or orders or direction quashing the order of 2nd Respondent dated 12.1.1996 withholding the refund due to the petitioner and to direct the 1st Respondent to implement the appellate order dt. 13.10.95 and refund the amount of Rs.87,729/- paid towards the disputed tax pursuant to the provisional assessment order for April, 1995 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR. P.SRINIVASA REDDY

Counsel for the Respondent No.: GP FOR COMMERCIAL TAX

The Court made the following :

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O r d e r: (Per BRSR, J.)

The petitioner seeks a writ of Mandamus directing the 1st respondent to implement the appellate order dated 13-10-1995 and refund the amount of Rs.87,729/- paid towards the disputed tax pursuant to the provisional assessment order for April, 1995.

It is brought to our notice by the learned Special standing counsel for the department that subsequent to the filing of this writ petition, the competent authority passed final assessment order and it was found that the petitioner is liable to pay Rs. 41,96,914/- towards the tax which is admittedly more than the claim of refund in this writ petition. Learned standing counsel made available a copy of the notice of attachment in Form No.5 issued under the provisions of the Revenue Recovery Act and published in the official Gazette dated 26th July, 2004 attaching the immovable property belonging to the petitioner situated at First floor, 4-3-81 & 82, Hill Street, Secunderabad.

In such view of the matter, the question of directing the refund as such does not arise. We find no merit in this writ petition and the same shall stand accordingly dismissed.

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B.Sudershan Reddy, J.

8th June, 2005

Ramesh Ranganathan, J.

Grr

Copies to:

1. The Comercial Tax Officer, Mahankali Street Circle, Secunderabad.
2. The Dy. Commissioner (Commercial Taxes), Secunderabad Division, Secunderabad.
3. To Sri P.Srinivas Reddy, Advocate (OPUC).
4. To Govt. Pleader for Taxes.
5. 2 spare copies.